

HOUSE \_\_\_\_\_ AMENDMENT NO. \_\_\_\_\_

Offered By \_\_\_\_\_

AMEND House Committee Substitute for Senate Bill No. 636, Page 57, Section 566.083, Line 23, by inserting after all of said section and line the following:

“568.040. 1. A person commits the crime of nonsupport if such person knowingly fails to provide adequate support for his or her spouse; a parent commits the crime of nonsupport if such parent knowingly fails to provide adequate support which such parent is legally obligated to provide for his or her child or stepchild who is not otherwise emancipated by operation of law.

2. For purposes of this section:

(1) "Arrearage":

(a) The amount of money created by a failure to provide support to a child under an administrative or judicial support order; or

(b) Support to an estranged or former spouse if the judgment or order requiring payment of spousal support also requires payment of child support and such estranged or former spouse is the custodial parent; or

(c) Both paragraphs (a) and (b).

The arrearage shall reflect any retroactive support ordered under a modification, and any judgments entered by a court of competent jurisdiction or any authorized agency and any satisfactions of judgment filed by the custodial parent;

(2) "Child" means any biological or adoptive child, or any child whose paternity has been established under chapter 454, or chapter 210, or any child whose relationship to the defendant has been determined, by a court of law in a proceeding for dissolution or legal separation, to be that of child to parent;

[(2)] (3) "Good cause" means any substantial reason why the defendant is unable to provide adequate support. Good cause does not exist if the defendant purposely maintains his inability to support;

[(3)] (4) "Support" means food, clothing, lodging, and medical or surgical attention;

[(4)] (5) It shall not constitute a failure to provide medical and surgical attention, if nonmedical remedial treatment recognized and permitted under the laws of this state is provided.

3. Inability to provide support for good cause shall be an affirmative defense under this section. A person who raises such affirmative defense has the burden of proving the defense by a preponderance of the evidence.

1           4. The defendant shall have the burden of injecting the issues raised by subdivision (4) of  
2 subsection 2 of this section.

3           5. Criminal nonsupport is a class A misdemeanor, unless the total arrearage is in excess of  
4 an aggregate of [twelve] eighteen monthly payments due under any order of support issued by any  
5 court of competent jurisdiction or any authorized administrative agency, in which case it is a class  
6 D felony.

7           6. (1) If at any time a defendant convicted of criminal nonsupport or pleads guilty to a  
8 charge of criminal nonsupport is placed on probation or parole, there may be ordered as a  
9 condition of probation or parole that the defendant commence payment of current support as well  
10 as satisfy the arrearages. Arrearages may be satisfied first by making such lump sum payment as  
11 the defendant is capable of paying, if any, as may be shown after examination of defendant's  
12 financial resources or assets, both real, personal, and mixed, and second by making periodic  
13 payments. Periodic payments toward satisfaction of arrears when added to current payments due  
14 [may] shall be in such aggregate sums as is not greater than fifty percent of the defendant's  
15 adjusted gross income after deduction of payroll taxes, medical insurance that also covers a  
16 dependent spouse or children, and any other court- or administrative-ordered support, only.

17           (2) If the defendant fails to pay the [current] support and arrearages [as ordered] under the  
18 terms of his or her probation, the court may revoke probation or parole and then impose an  
19 appropriate sentence within the range for the class of offense that the defendant was convicted of  
20 as provided by law, unless the defendant proves good cause for the failure to pay as required  
21 under subsection 3 of this section.

22           (3) After a period of not less than eight years, an individual who has pled guilty to or has  
23 been convicted of a first felony offense for criminal nonsupport under this section and who has  
24 successfully completed probation after a plea of guilt or was sentenced may petition the court for  
25 expungement of all official records all recordations of his or her arrest, plea, trial, or conviction.  
26 If the court determines after hearing that such person has not been convicted of any subsequent  
27 offense; does not have any other felony pleas of guilt, findings of guilt or convictions; is current  
28 on all child support obligations; has paid off all arrearages; and has no other criminal charges or  
29 administrative child support actions pending at the time of the hearing on the application for  
30 expungement with respect to all children subject to orders of payment of child support or that the  
31 defendant has successfully completed a criminal nonsupport courts program under section  
32 478.1000, the court shall enter an order of expungement. Upon granting the order of  
33 expungement, the records and files maintained in any court proceeding in an associate or circuit  
34 division of the circuit court under this section shall be confidential and only available to the  
35 parties or by order of the court for good cause shown. The effect of such order shall be to restore  
36 such person to the status he or she occupied prior to such arrest, plea or conviction, and as if such

1 event had never taken place. No person for whom such order has been entered shall be held  
2 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false  
3 statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial,  
4 conviction, or expungement in response to any inquiry made of him or her for any purpose  
5 whatsoever and no such inquiry shall be made for information relating to an expungement under  
6 this section. A person shall only be entitled to one expungement under this section. Nothing in  
7 this section shall prevent the director of the department of social services from maintaining such  
8 records as to ensure that an individual receives only one expungement under this section for the  
9 purpose of informing the proper authorities of the contents of any record maintained under this  
10 section.

11 7. During any period that a nonviolent defendant is incarcerated for criminal nonsupport,  
12 if the defendant is ready, willing, and able to be gainfully employed during said period of  
13 incarceration, the defendant, if he or she meets the criteria established by the department of  
14 corrections, may be placed on work release to allow the defendant to satisfy defendant's obligation  
15 to pay support. Arrearages shall be satisfied as outlined in the collection agreement.

16 8. Beginning August 28, 2009, every nonviolent first- and second-time offender then  
17 incarcerated for criminal nonsupport, who has not been previously placed on probation or parole  
18 for conviction of criminal nonsupport, may be considered for parole, under the conditions set forth  
19 in subsection 6 of this section, or work release, under the conditions set forth in subsection 7 of  
20 this section.

21 9. Beginning January 1, 1991, every prosecuting attorney in any county which has entered  
22 into a cooperative agreement with the [child support enforcement service of the] family support  
23 division [of] within the department of social services regarding child support enforcement services  
24 shall report to the division on a quarterly basis the number of charges filed and the number of  
25 convictions obtained under this section by the prosecuting attorney's office on all IV-D cases. The  
26 division shall consolidate the reported information into a statewide report by county and make the  
27 report available to the general public.

28 10. Persons accused of committing the offense of nonsupport of the child shall be  
29 prosecuted:

30 (1) In any county in which the child resided during the period of time for which the  
31 defendant is charged; or

32 (2) In any county in which the defendant resided during the period of time for which the  
33 defendant is charged.” ; and

34 Further amend said bill by amending the title, enacting clause, and intersectional references  
35 accordingly.